

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THOMAS ROLAND, III,

Petitioner,

DECISION AND ORDER

06-CV-6543L

v.

I. RIVERA,

Respondent.

Petitioner, Thomas Roland, III (“Roland”), filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 claiming that his conviction in Erie Supreme Court was unconstitutionally obtained. This Court referred the petition to United States Magistrate Judge Victor E. Bianchini pursuant to 28 U.S.C. § 636(b) for the Magistrate Judge to issue a Report and Recommendation concerning disposition of the petition.

Magistrate Judge Bianchini reviewed the petition and all matters relative to Roland’s guilty plea and sentencing and issued a thorough 17-page Report and Recommendation (Dkt. #25) recommending that the petition be dismissed. Roland has not filed any objections to the Report and Recommendation, although the Court granted Roland a lengthy extension within which to file any objections.

In spite of the fact Roland has neglected or failed to file any objections, I have carefully reviewed his petition, the proceedings in state court, as well as the Report and Recommendation of the Magistrate Judge. In sum, I believe that Magistrate Judge Bianchini thoroughly analyzed the

facts and the law relative to Roland 's guilty plea and sentence, and I see no basis whatsoever to modify the Report and Recommendation.

Magistrate Judge Bianchini carefully considered the facts surrounding Roland's plea before the state trial court, including proceedings ordered there to determine if Roland was competent to proceed. The trial court determined Roland to be competent and, thereafter, Roland pleaded guilty to the lesser charge of manslaughter in the first degree. Such a plea satisfied the indictment charging him with intentional murder.

Roland challenges the plea and his competency but, as Magistrate Judge Bianchini discussed, the state trial judge engaged in a careful and thorough colloquy with Roland at the time of his guilty plea and clearly ascertained that Roland understood his rights, accepted the terms of the plea, and clearly indicated he was giving up or waiving the right to appeal.

Magistrate Judge Bianchini sets forth in detail the facts and a careful analysis of the law. I see no reason to duplicate what the Magistrate Judge has set forth clearly.


I believe that Magistrate Judge Bianchini considered all the claims raised by Roland, and I accept and adopt them all. I agree Magistrate Judge Bianchini that Roland has failed to demonstrate that either his plea or sentence was obtained in violation of Roland's federal constitutional rights. I believe the evidence demonstrates that Roland understood his rights when he pleaded guilty to manslaughter relative to the vicious stabbing death of the victim, Sandra Lucas, and he also understood that the sentence was expected to be a determinant sentence of 18 years imprisonment.

CONCLUSION

I accept and adopt the Report and Recommendation (Dkt. #25) of United States Magistrate Judge Victor E. Bianchini. Based on that Report and Recommendation, I hereby dismiss the petition in its entirety.

Because Roland has failed to make a substantial showing of a denial of a constitutional right, I decline to issue a certificate of appealability. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
April 7, 2011.